Testimony of

America's Community Bankers

on

H.R. 3424, the Community Choice in Real Estate Act

before the

Subcommittee on Financial Institutions and Consumer Credit

of the

Committee on Financial Services

of the

U.S. House of Representatives

on

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America's Community Bankers
Washington, DC

America's Community Bankers (ACB)[1] is pleased to submit this statement for the record on today's hearing before the Subcommittee on Financial Institutions and Consumer Credit regarding H.R. 3424, the so-called "Community Choice in Real Estate Act." This legislation would prohibit the Federal Reserve Board and the Department of Treasury (collectively, the Agencies) from allowing financial holding companies (FHCs) and financial subsidiaries of national banks [2] to engage in real estate brokerage and real estate management activities.

ACB Position Summary

ACB strongly opposes H.R. 3424, and urges Congress not to pass this legislation. We are particularly concerned about an amendment modeled after H.R. 3424 that was included by the House Appropriations Committee in H.R. 5120, the Treasury/Postal appropriations bill for FY 2003.

ACB opposes this amendment both on the substantive grounds laid out in this statement, and on procedural grounds.

By including this amendment on the Treasury/Postal appropriations bill, proponents of this legislation have effectively circumvented the regular legislative process. In 1999 the Congress completed over 20 years of deliberations and passed the Gramm-Leach-Bliley (GLBA)[3]. financial modernization legislation. It listed a full range of financial activities permissible for financial holding companies. But Congress realized that this list could not be considered the final word, and so permitted the Federal Reserve and Treasury to jointly approve additional activities to allow the financial industry to adapt to changing market conditions. While the appropriate authorizing committees have exercised their oversight function on this rule, they have not determined it is necessary to intervene in the regulatory process they were instrumental in creating. Unfortunately, the Appropriations Committee – which was not involved in the debate on financial modernization – has precipitously intervened without hearing and without consultation with the authorizing committee. The House Financial

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[1] ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

[2] 66 Fed. Reg. 307 (January 3, 2001). The Board and the Secretary extended the comment period deadline from March 2, 2001 to May 1, 2001. 66 Fed. Reg. 12440 (February 27, 2001).

[3] 12 U.S.C. § 1841 *et seq*.

Services Committee and this Subcommittee should vehemently oppose this rider to the Treasury/Postal appropriations bill.

We urge Congress to allow the Agencies to complete the process set forth in Gramm-Leach-Bliley and to finalize their proposed rule to add real estate brokerage and management to the list of permissible activities for FHCs and financial subsidiaries of national banks. We believe the proposal will provide additional competitive opportunities for community banks to serve their customers. Equally important, ACB believes the proposed rule will benefit consumers of real estate transaction services, who will enjoy greater convenience and choice, which could help lower overall transaction costs.

In addition, we urge Congress not to pass this legislation because it would reverse a core provision of the Gramm-Leach-Bliley Act. By passing this historic financial modernization law, Congress lifted the Depression-era barriers separating financial services in America. In doing so, Congress made the wise decision of authorizing the Agencies to determine which activities are proper for financial holding companies. To prohibit the Agencies from moving forward on this proposed rule would be a major step backwards from the progress being made in implementing the GLBA. We strongly urge Congress to preserve the integrity and the intent of the GLBA by rejecting H.R. 3424.

Background

It is important to note that there is nothing new or particularly controversial about financial institutions offering real estate brokerage services. As the Subcommittee knows, many financial institutions have had this authority for some time. More than two-dozen states permit the activity for their banks, and the Office of Thrift Supervision (OTS) has allowed federally chartered savings associations to offer real estate brokerage services through separate service corporations for a number of years. In a 1997 interpretative letter, the OTS reasoned that real estate brokerage was permissible for a federally chartered savings association (through a service corporation) because it "complements mortgage lending in several respects."

Today, federal savings associations with real estate brokerage operations generally do so as a means to fulfill service needs and add further value to the consumer relationship. In some instances, these institutions may be stepping into a void, as is the case in many rural communities, to offered a

needed service. Even so, fewer than 10 percent of all OTS-regulated institutions have elected to use this power. While the majority may choose not to offer real estate brokerage services for a wide variety of reasons, including individual resources and long-standing relationships with local realtors, what is clear is that no unfair competition or lack of consumer choice has resulted.

In point of fact, adding value to the customer relationship is precisely why, during the same time period, many national realty chains have responded to increasing consumer demands for more simple or "one stop" real estate transaction services by starting affiliates that offer real estate lending. These companies obviously identified a competitive opportunity. Today, they represent significant competition for depository institution providers of real estate lending services.

The Proposed Rule

On January 3, 2001, the Agencies published a proposed rule in response to a request for a "financial in nature" determination. Specifically, the Agencies were asked to determine that real estate brokerage and management activities are financial in nature or incidental to a financial activity. The GLBA allows bank holding companies that qualify as FHCs to engage in a broad range of listed activities defined as financial in nature. Under GLBA, FHCs also can engage in other activities that the Board, in consultation with the Secretary, determines to be financial in nature or incidental to a financial activity.

After considering the relevant statutory factors, the Agencies have proposed a final rule that would amend section 225.86 of the Board's regulations to add real estate brokerage and real estate management to the "laundry list" of permissible activities for FHCs.[4]

[4] Under the proposal, "real estate brokerage" would be defined as acting as an agent for a buyer, seller, lessor or lessee of real estate; listing and advertising real estate; providing advice in connection with a real estate purchase, sale, exchange, lease or rental transaction; bringing together parties interested in consummating such a real estate transaction; and negotiating on behalf of such parties a contract relating to such a real estate transaction. "Real estate management" activities would include offering such services as procuring tenants; negotiating leases; maintaining security deposits; billing and collecting rent payments; providing periodic accountings for such payments; making principal, interest, insurance, tax and utility payments; and generally overseeing the inspection, maintenance and upkeep of real estate.

ACB Strongly Supports The Proposed Rule

As noted at the outset, ACB strongly supports the Agencies' proposal to add real estate brokerage and management to the laundry list of FHC-authorized activities that are financial in nature or incidental to a financial activity. We believe this action will enhance competitive opportunities while benefiting consumers. In ACB's view, there is ample support and precedent for the proposed rule.

- **Real estate brokerage is "financial in nature."** Real estate brokerage is part of one of life's most important financial transactions: the purchase of a home. It is a key step in (i) receiving pre-approval for a mortgage loan; (ii) identifying a property to purchase; (iii) securing the financing to complete the purchase; and (iv) obtaining the necessary insurance (such as private mortgage and title insurance) for the transaction.

- **There already is strong precedent for allowing FHCs to engage in real estate brokerage and management.** For some time, federal savings associations have been permitted to engage in real estate brokerage activities through affiliated service corporations. Also, more than two-dozen states permit their state-chartered banks to provide real estate brokerage services. And while the number of financial institutions that currently engage in real estate brokerage is not significant, those institutions with real estate brokerage operations have managed these activities safely, prudently and with the goal of serving the financial services needs of their customers.

- **Real estate brokerage is <u>not</u> a mixture of banking and commerce.** Real estate brokerage is not a commercial activity in the sense that it involves manufacturing or farming activities. As the proposed definitions confirm, real estate brokers do not act as principal but, rather, as agents. This role is very similar to that of the transaction "finder." The Board and the Secretary recently approved this activity for FHCs and national banks and many state-chartered banks have acted as finders for some time. Bringing together buyers and sellers for financial transactions that the parties themselves consummate is at the core of a real estate broker's function.

- **Consumers of real estate will benefit from FHCs being able to offer real estate brokerage services.** Increasingly, consumers are looking for

the option of "one stop" shopping for real estate transactions. This is precisely why several large real estate companies currently operate mortgage lending affiliates and subsidiaries. In fact, any company may originate mortgage loans without owning a depository institution. The addition of FHCs to the roster of real estate brokers will lead to increased competition, which could result in lower transaction costs for real estate consumers.

- **Existing laws would continue to protect consumer choice.** While it has been suggested that allowing FHCs to offer real estate brokerage and management services could lead to anti-competitive practices, just the opposite will result. In fact, existing federal laws protect consumers from anti-competitive practices. The anti-tying rules of the Bank Holding Company Act prohibit the "tying" of real estate credit services to the use of an affiliated real estate broker. In addition, the affiliate transaction rules of sections 23A and 23B of the Federal Reserve Act add arm's length requirements to all affiliate relationships. As well, the privacy protections mandated by GLBA would extend to customers of FHC-affiliated real estate brokers, unlike their non-FHC-affiliated counterparts. Finally, FHCs would be subject to the same state laws governing the licensing of real estate brokers, which would add yet another layer of consumer protection.

- **Precedent supports real estate management.** The addition of general real estate management activities likewise is a natural extension of currently permissible activities. First, as noted in the proposal, savings and loan holding companies and service corporation subsidiaries of federal savings banks have been authorized to engage in real estate management and real estate brokerage for some time. In addition, financial institutions generally perform activities that are operationally and functionally equivalent to the typical responsibilities of a real estate manager. For example, financial institutions have long engaged in such activities as collecting loan and lease payments; managing and disposing of "other real estate owned" and "debt previously contracted" property; and making principal, interest and tax payments on collateral securing real estate transactions. FHCs and financial subsidiaries are well suited to perform the functions of a real estate manager.

Nothing in the proposed rule portends of unfair competition or decreased consumer choice. At its core, this proposal is an opportunity to provide

consumers with more choice for realty services. Equally important, this proposal would offer such enhanced freedom of choice with an attendant scheme of comprehensive consumer protection regulation, including truth in lending and consumer privacy protections. If the Agencies proceed to finalize this proposal, consumers will only benefit.

ACB member institutions have been stalwarts over many decades in providing home ownership opportunities for Americans in communities throughout this country. Our members constantly seek new ways to offer their customers greater choice and convenience. This proposal is such an opportunity.

H.R. 3424, the "Community Choice in Real Estate Act"

ACB strongly opposes H.R. 3424 and urges Congress not to pass this legislation in any form, either as a freestanding bill or as part of another legislative measure.

Contrary to its title, this legislation is both anti-consumer and anti-competitive. In this statement, we have listed a number of reasons why the proposed rule will benefit consumers by expanding competition and choices for real estate brokerage and management services. By prohibiting the Agencies from moving forward on this rule, H.R. 3424 will only limit the choices available to consumers for these services.

It is worth noting that, in recent testimony before the Senate Banking Financial Institutions Subcommittee, two major real estate organizations – The Realty Alliance and RESPRO – opposed the NAR's campaign on this issue as anti-competitive. These organizations pointed out that many real estate brokerage firms are offering financial services themselves, including mortgages and insurance.

Conclusion

In conclusion, we would like to emphasize the following points to the Subcommittee:

- The proposed rule will increase competitive opportunities for financial institutions.
- Enhanced competition will lead to increased convenience and choice, which will benefit consumers directly.

- The proposed rule will help level the playing field between and among financial institutions and other real estate lenders that offer a full range of real estate transaction services.
- The proposed rule is well grounded in precedent and the Agencies' "financial in nature" analysis is sound.
- H.R. 3424 is anti-consumer and anti-competition and should be rejected.

Thank you for taking our views on this legislation into consideration.